

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP

2 Diane M. Doolittle (CA Bar No. 142046)
dianedoolittle@quinnemanuel.com
3 555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065
4 Telephone: (650) 801-5000
Facsimile: (650) 801-5100

Andrew H. Schapiro (admitted *pro hac vice*)
andrewschapiro@quinnemanuel.com
191 N. Wacker Drive, Suite 2700
Chicago, IL 60606
Telephone: (312) 705-7400
Facsimile: (312) 705-7401

6 Stephen A. Broome (CA Bar No. 314605)
stephenbroome@quinnemanuel.com
7 Viola Trebicka (CA Bar No. 269526)
violatrebicka@quinnemanuel.com
8 865 S. Figueroa Street, 10th Floor
Los Angeles, CA 90017
9 Telephone: (213) 443-3000
10 Facsimile: (213) 443-3100

Josef Ansorge (admitted *pro hac vice*)
josefansorge@quinnemanuel.com
1300 I. Street, N.W., Suite 900
Washington, D.C. 20005
Telephone: 202-538-8000
Facsimile: 202-538-8100

11 Jonathan Tse (CA Bar No. 305468)
12 jonathantse@quinnemanuel.com
50 California Street, 22nd Floor
13 San Francisco, CA 94111
14 Telephone: (415) 875-6600
Facsimile: (415) 875-6700

Jomaire A. Crawford (admitted *pro hac vice*)
jomairecrawford@quinnemanuel.com
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100

15 *Attorneys for Defendant Google LLC*

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

19 CHASOM BROWN, WILLIAM BYATT,
20 JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
21 individually and on behalf of all similarly
situated,

22 Plaintiffs,

23 v.

24 GOOGLE LLC,
25 Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**GOOGLE LLC'S ADMINISTRATIVE
MOTION TO SEAL JOINT SUBMISSION
IN RESPONSE TO DKT. 242 RE: STATUS
OF DISCOVERY DISPUTES**

Referral: Hon. Susan van Keulen, USMJ

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Case No. 5:20-cv-03664-LHK-SVK

GOOGLE LLC'S ADMINISTRATIVE MOTION TO SEAL JOINT SUBMISSION IN RESPONSE TO
DKT. 242 RE: STATUS OF DISCOVERY DISPUTES

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”) respectfully
 3 seeks to seal certain portions of the parties’ Joint Submission In Response to Dkt. 242 Re: Status of
 4 Discovery Disputes (“Joint Submission”), which contains non-public, sensitive confidential and
 5 proprietary business information that could affect Google’s competitive standing and may expose
 6 Google to increased security risks if publicly disclosed. This information is highly confidential and
 7 should be protected. This Court has previously sealed the same or substantively similar information,
 8 including in Dkt. Nos. 143, 152, 160, 172, 174, 183, 190, 197, 226, 238, 240, and 276.

9 This Administrative Motion pertains for the following information contained in the Joint
 10 Submission:

11 Document	12 Portions to be Filed Under Seal	13 Party Claiming Confidentiality
14 Joint Submission	15 Portions Highlighted in Yellow at 16 pages 27, 37, 41, 43, 44	17 Google

18 **II. LEGAL STANDARD**

19 A party seeking to seal material must “establish[] that the document, or portions thereof, are
 20 privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is
 21 “sealable”). Civ. L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing
 22 only of sealable material.” *Id.*

23 In the context of dispositive motions, materials may be sealed in the Ninth Circuit upon a
 24 showing that there are “compelling reasons” to seal the information. *See Kamakana v. City & Cty. of*
Honolulu, 447 F.3d 1172, 1179-80 (9th Cir. 2006). However, a party seeking to seal information in a
 25 non-dispositive motion must show only “good cause.” *Id.* at 1179-80. The rationale for the lower
 26 standard with respect to non-dispositive motions is that “the public has less of a need for access to
 27 court records attached only to non-dispositive motions because these documents are often unrelated,
 28 or only tangentially related, to the underlying cause of action” and that as a result “[t]he public
 policies that support the right of access to dispositive motions, and related materials, do not apply with
 equal force to non-dispositive materials.” *Kamakana*, 447 F.3d at 1179; *see also TVIIM, LLC v.*

1 *McAfee, Inc.*, 2015 WL 5116721, at *1 (N.D. Cal. Aug. 28, 2015) (“Records attached to non-
 2 dispositive motions are not subject to the strong presumption of access.”) (citation omitted). Under
 3 the “good cause” standard, courts will seal statements reporting on a company’s users, sales,
 4 investments, or other information that is ordinarily kept secret for competitive purposes. *See*
 5 *Hanginout, Inc. v. Google, Inc.*, 2014 WL 1234499, at *1 (S.D. Cal. Mar. 24, 2014); *Nitride*
 6 *Semiconductors Co. v. RayVio Corp.*, 2018 WL 10701873, at *1 (N.D. Cal. Aug. 1, 2018) (granting
 7 motion to seal “[c]onfidential and proprietary information regarding [Defendant]’s products” under
 8 “good cause” standard) (Van Keulen, J.). Although the materials that Google seeks to seal here easily
 9 meet the higher “compelling reasons” standard, the Court need only consider whether these materials
 10 meet the lower “good cause” standard.

11 **III. THE ABOVE IDENTIFIED MATERIALS SHOULD ALL BE SEALED**

12 Courts have repeatedly found it appropriate to seal documents that contain “business
 13 information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435
 14 U.S. 589, 589-99 (1978). Good cause to seal is shown when a party seeks to seal materials that
 15 “contain[] confidential information about the operation of [the party’s] products and that public
 16 disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg of*
 17 *Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that
 18 could harm a litigant’s competitive standing may be sealed even under the “compelling reasons”
 19 standard. *See e.g., Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2
 20 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’
 21 standard where that information could be used to the company’s competitive disadvantage”) (citation
 22 omitted). Courts in this district have also determined that motions to seal may be granted as to
 23 potential trade secrets. *See, e.g., United Tactical Sys., LLC v. Real Action Paintball, Inc.*, 2015 WL
 24 295584, at *3 (N.D. Cal. Jan. 21, 2015) (rejecting argument against sealing “that [the party] ha[s] not
 25 shown that the substance of the information . . . amounts to a trade secret”).

26 Here, the Joint Submission comprises confidential and proprietary information regarding
 27 highly sensitive features of Google’s internal systems and operations that Google does not share
 28 publicly. Specifically, this information provides details related to cookies, internal identifiers, and

1 financial projections, as well as Google’s internal communications and practices with regard to
 2 Incognito, X-Client-Data Header, and their proprietary functions. Such information reveals Google’s
 3 internal strategies, system designs, and business practices for operating and maintaining many of its
 4 important services while complying with its legal and privacy obligations.

5 Public disclosure of the above-listed information would harm Google’s competitive standing it
 6 has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
 7 Google’s proprietary systems, strategies, and designs to Google’s competitors. That alone is a proper
 8 basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-02329-
 9 BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain sensitive
 10 business information related to Google’s processes and policies to ensure the integrity and security of
 11 a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-02787-WHO,
 12 Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because “disclosure
 13 would harm their competitive standing by giving competitors insight they do not have”); *Trotsky v.*
 14 *Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting motion to seal
 15 as to “internal research results that disclose statistical coding that is not publically available”).

16 Moreover, if publicly disclosed, malicious actors may use such information to seek to
 17 compromise Google’s identifier systems and practices. Google would be placed at an increased risk
 18 of cyber security threats. *See, e.g., In re Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D.
 19 Cal. Sept. 25, 2013) (sealing “material concern[ing] how users’ interactions with the Gmail system
 20 affects how messages are transmitted” because if made public, it “could lead to a breach in the
 21 security of the Gmail system”). The security threat is an additional reason for this Court to seal the
 22 identified information.

23 The information Google seeks to redact, including cookies, internal identifiers, and financial
 24 projections, as well as Google’s internal communications and practices with regard to Incognito, X-
 25 Client-Data Header, and their proprietary functions, is the minimal amount of information needed to
 26 protect its internal systems and operations from being exposed to not only its competitors but also to
 27 nefarious actors who may improperly seek access to and disrupt these systems and operations. The
 28

1 “good cause” rather than the “compelling reasons” standard should apply but under either standard,
2 Google’s sealing request is warranted.

3 **IV. CONCLUSION**

4 For the foregoing reasons, the Court should seal the identified portions of the Joint
5 Submission.

6 DATED: September 24, 2021

7 QUINN EMANUEL URQUHART &
8 SULLIVAN, LLP

9 By /s/ Andrew H. Schapiro

10 Andrew H. Schapiro (admitted *pro hac vice*)
11 andrewschapiro@quinnemanuel.com
12 191 N. Wacker Drive, Suite 2700
13 Chicago, IL 60606
14 Telephone: (312) 705-7400
15 Facsimile: (312) 705-7401

16 Stephen A. Broome (CA Bar No. 314605)
17 stephenbroome@quinnemanuel.com
18 Viola Trebicka (CA Bar No. 269526)
19 violatrebicka@quinnemanuel.com
20 865 S. Figueroa Street, 10th Floor
21 Los Angeles, CA 90017
22 Telephone: (213) 443-3000
23 Facsimile: (213) 443-3100

24 Diane M. Doolittle (CA Bar No. 142046)
25 dianedoolittle@quinnemanuel.com
26 555 Twin Dolphin Drive, 5th Floor
27 Redwood Shores, CA 94065
28 Telephone: (650) 801-5000
Facsimile: (650) 801-5100

Josef Ansorge (admitted *pro hac vice*)
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Telephone: 202-538-8000
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Jomaire A. Crawford (admitted *pro hac vice*)
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51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000
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1 Jonathan Tse (CA Bar No. 305468)
2 jonathantse@quinnmanuel.com
3 50 California Street, 22nd Floor
4 San Francisco, CA 94111
Telephone: (415) 875-6600
Facsimile: (415) 875-6700

5 *Attorneys for Defendant Google LLC*

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